

If, finally, you shall find no such law, anywhere, nor be able to conceive of any such law yourself, I take the liberty to suggest that it is your imperative duty to submit the question to your associate legislators; and, if they can give no light on the subject, that you call upon them to burn all the existing statute books of the United States, and then to go home and content themselves with the exercise of only such rights and powers as nature has given to them in common with the rest of mankind.

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Spooner's Private Post Office

Lysander Spooner appears at various times in American affairs of widely differing substance in the 19th century, with uniquely individual published contributions to legal, economic, political and even theological theory. The largest part of such activities is known only to a small number of students and researchers, and the history textbooks usually do not even mention his name. The best known venture of Spooner, which has been memorialized by several commentators, was his private mail business, the American Letter Mail Company. This was one of many such enterprises which competed successfully against the federal government's post office, but were driven out of business by an act of Congress which became effective July 1, 1845.

Spooner fought this in the courts and lost, but he always maintained that the government adopted his lower rates. (See his *The Unconstitutionality of the Laws of Congress Prohibiting Private Mails* [New York, 1944], and *Who Caused the Reduction in Postage?* [Boston, 1851].) He has been repeatedly described as "the father of cheap postage in America." Apparently Spooner's company handled a generous volume of business, because covers bearing its stamp and cancellation are not considered "of great rarity" even today, according to the specialist Donald S. Patton in *The Philatelist*. (One will find of considerable interest with reference to Spooner and his post the article by Ernest A. Kehn, Henry M. Goodkind and Elliott Perry, "Look Before You Lick," *Reader's Digest* [June, 1947], pp. 125-127, and Henry F. Unger's "Spooner and the Post Office," *Business Progress* [March-April, 1964], p. 16.)

A LETTER

TO

THOMAS F. BAYARD:

CHALLENGING HIS RIGHT—AND THAT OF ALL THE
OTHER SO-CALLED SENATORS AND REPRESENTATIVES IN CONGRESS—

TO EXERCISE ANY LEGISLATIVE POWER WHATEVER
OVER THE PEOPLE OF THE UNITED STATES.

—
BY LYSANDER SPOONER.
—

BOSTON, MASS.:
PUBLISHED BY THE AUTHOR.
1842.

TITLE PAGE, ORIGINAL EDITION OF *Letter to Bayard*

The celebrated *Letter to Thomas F. Bayard* was a product of a coincidental triangular confrontation of Spooner, Senator Thomas F. Bayard (D., Del.) (1828-1898) and Lyman Abbott (1835-1922), the most eminent figure in the United States in the propagation of the theological tenets of Christian Evolution.¹ Abbott also was to establish a formidable reputation in journalism, in addition to taking over the pulpit of the famous Plymouth Church in Brooklyn upon the death of Henry Ward Beecher (1813-1887), the most famous Protestant clergyman in America in the post-Civil War generation.

Beecher founded a journal in 1870, *The Christian Union*, which became a significant voice in the country in the last decades of the nineteenth century.² Abbott joined him as co-editor in 1876, and became sole editor for a short span of years beginning in 1882. Abbott also wrote a department titled "The Outlook"³ from the beginning of his association with Beecher in editing *The Christian Union*. This involved a weekly review of current events and politics quite apart from theology or religion, and gained the journal many readers and Abbott an increasingly influential status as a secular commentator on the political and social scene.

Abbott, once a member of the Republican Party, had severed his relations with it by this time, as had a number of other noted personalities, mainly because of unhappiness and revulsion over the conduct of the Reconstruction program in the South after the Civil War.⁴ He relates in his memoirs that upon taking over editorial control of *The Christian Union* early in 1882, "I resolved to make it in politics independent of all party organization." A feature of the journal for some time thereafter was a series of fierce editorials which criticized politics and politicians unmercifully, including such sentiments as "Both parties are corpses; the country needs a live one."⁵

The immense increase in State intervention and concentration of power which resulted from the Civil War was still insufficient for Abbott. In this time of the innovation of centralized monopoly of money issue and the proliferation of federal interventions and controls⁶ (which, incidentally, make a hash out of the easy and glib generalization that the 1865-1900 era was a time of runaway individualist "laissez faire"), Abbott wanted far more done in the department of governmental direction, regulation, and control.⁸ And it was in exasperation and discontent with the politicians of both parties that he condemned them all, although it was his reflection upon their moral character which drew a protesting letter from Senator Bayard.

And it was this objection from Bayard which provided Spooner the opportunity to introduce his argument, published separately,

maintain, at the point of the bayonet, an arbitrary and irresponsible dominion over those who were too ignorant and too weak to protect themselves against the conspirators who had thus combined to deceive, plunder, and enslave them. ||

Do you really think, Sir, that such a constitution as this can avail to justify those who, like yourself, are engaged in enforcing it? Is it not plain, rather, that the members of Congress, as a legislative body, whether they are conscious of it or not, are, in reality, a mere cabal of swindlers, usurpers, tyrants and robbers? Is it not plain that they are stupendous blockheads, if they imagine that they are anything else than such a cabal? or that their so-called laws impose the least obligation upon anybody?

If you have never before looked at this matter in this light, I ask you to do so now. And in the hope to aid you in doing so candidly, and to some useful purpose, I take the liberty to mail for you a pamphlet entitled:

"NATURAL LAW; OR THE SCIENCE OF JUSTICE; a Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; Showing That All Legislation Whatsoever Is an Absurdity, a Usurpation, and a Crime. Part I."

In this pamphlet, I have endeavored to controvert distinctly the proposition that, by any possible process whatever, any man, or body of men, can become possessed of any right of arbitrary dominion over other men, or other men's property; or, consequently, any right whatever to make any law whatever, of their own—distinct from the law of nature—and compel any other men to obey it.

I trust I need not suspect you, as a legislator under the Constitution, and claiming to be an honest man, of any desire to evade the issue presented in this pamphlet. If you shall see fit to meet it, I hope you will excuse me for suggesting that—to avoid verbiage, and everything indefinite—you give at least a single specimen of a law that either heretofore has been made, or that you conceive it possible for legislators to make—that is, some law of their own device—either has been, or shall be, really and truly obligatory upon other persons, and which such other persons have been, or may be, rightfully compelled to obey.

If you can either find or devise any such law, I trust you will make it known, that it may be examined, and the question of its obligation be fairly settled in the popular mind.

But if it should happen that you can neither find such a law in the existing statute books of the United States, nor, in your own mind, conceive of such a law as possible under the Constitution, I give you leave to find it, if that be possible, in the constitution or statute book of any other people that now exist, or ever have existed, on the earth.

who lived before the flood. They never personally signed, sealed, acknowledged, or delivered, or dared to sign, seal, acknowledge, or deliver, the instrument which they imposed upon the country as law. They never, in any open and authentic manner, bound even themselves to obey it, or made themselves personally responsible for the acts of their so-called agents under it. They had no natural right to impose it, as law, upon a single human being. The whole proceeding was a pure usurpation.

In practice, the Constitution has been an utter fraud from the beginning. Professing to have been "ordained and established" by "*we, the people of the United States*," it has never been submitted to them, as individuals, for their voluntary acceptance or rejection. They have never been asked to sign, seal, acknowledge, or deliver it, as their free act and deed. They have never signed, sealed, acknowledged, or delivered it, or promised, or laid themselves under any kind of obligation, to obey it. Very few of them have ever read, or even seen it; or ever will read or see it. Of its legal meaning (if it can be said to have any) they really know nothing; and never did, nor ever will, know anything.

Why is it, Sir, that such an instrument as the Constitution, for which nobody has been responsible, and of which few persons have ever known anything, has been suffered to stand, for the last ninety years, and to be used for such audacious and criminal purposes? It is solely because it has been sustained by the same kind of conspiracy as that by which it was established; that is, by the wealth and the power of those few who were to profit by the arbitrary dominion it was assumed to give them over others. While the poor, the weak, and the ignorant, who were to be cheated, plundered, and enslaved by it, have been told, and some of them doubtless made to believe, that it is a sacred instrument, designed for the preservation of their rights.

These cheated, plundered, and enslaved persons have been made to feel, if not to believe, that the Constitution had such miraculous power, that it could authorize the majority (or even a plurality) of the male adults, for the time being—a majority numbering at this time, say, five millions in all—to exercise, through their agents, secretly appointed, an arbitrary and irresponsible dominion over the properties, liberties, and lives of the whole fifty millions; and that these fifty millions have no rightful alternative but to submit all their rights to this arbitrary dominion, or suffer such confiscation, imprisonment, or death as this secretly appointed, irresponsible cabal, of so-called legislators, should see fit to resort to for the maintenance of its power.

As might have been expected, and as was, to a large degree, at least, intended, this Constitution has been used from the beginning by ambitious, rapacious, and unprincipled men, to enable them to

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and directed solely to Bayard. Spooner's account of this is lost, since his papers and literary effects, in the possession of Benjamin R. Tucker, went up in flames when Tucker's publishing enterprise and its entire contents were destroyed by fire early in 1908.⁹ But he was hardly a collaborator with Abbott; it probably would have been hard to find any two men in America as opposite as Abbott and Spooner. The two represented utterly divergent viewpoints and fundamental positions. They simply used Senator Bayard, each in his own way, to establish and further their views.

Bayard, if anything, though a United States Senator from Delaware for sixteen years (1869-1885), came closer to Spooner in overall ideological convictions, even if starting from quite different premises. William Alexander Robinson, in the *Dictionary of American Biography*,¹⁰ characterized Bayard as having built a career upon defending "unpopular minorities and hopeless causes." A "Democrat of the old school," he was implacably opposed to Reconstruction policies as "harsh and impolitic," and because "they involved an undue centralization of federal power with a corresponding aggrandizement of the executive branch of that government."

Bayard is further described as having combated "anything else than a currency of value," namely, gold and silver, as "lawful or safe money." During his tenure, Bayard's party was almost continuously in the minority, so the situation provided an almost endless opportunity to protest the employment of State power by the Republicans for the material enhancement of specific favored individuals or groups. Robinson declared that Bayard "hated class legislation of every sort, whether it took the form of ship subsidies, railroad land grants, or tariff protection," and that "militarism and socialism he considered equally inimical to freedom." But from the context of action, it appears that such public positions were matters of personal conviction, and not mere temporary political expediency or opportunistic harassment of the majority.

There is no direct evidence that Bayard was influenced by Spooner's *Letter*, an onslaught which dimmed the critical element in Abbott's position almost to the point of extinction. Nor is there verifiable documentation attesting to his having commented on Spooner's pamphlet, *Natural Law*, which Spooner sent Bayard and which undoubtedly contributed to further discomfort for the Senator. Of course, it was hardly possible to come to grips with Spooner and remain a politician. But Bayard's language in Senate debate two months after Spooner's *Letter* sounded almost as if it had been prepared by Spooner. In a speech on a proposed tax bill Bayard declared, "A tax, after all, is against natural right; it is a payment forced by the government for its use,"¹¹ and went on to criticize the internal revenue system in terms which read like yesterday's newspaper editorial,¹² though there is a vast difference between the tax jungle of today and the system Bayard found detestable.

Subsequent Senate exchanges reveal Bayard expressing other striking views concerning objections to the waxing power of Washington. In an attack on a bill in April, 1884, which proposed to transfer to the Congress the power to suppress and extirpate contagious diseases among domestic animals throughout the country, Bayard asserted opposition again in language which has a startling contemporary quality. "This constant intervention by government in tasks that belong to the individual must cease," he warned, "ours will become as bureaucratic a government as that of Russia." [1] "This bill is nothing in the world but another illustration of the principle of socialism that is fast growing under our practices of legislation and penetrating every branch of this government and entering into almost every detail of our public expenditure. Day by day the doctrines and practices of a paternal government are speciously and tentatively expanding over the country, and the habit of popular thought is unhappily becoming accustomed to them."¹³

It is in the context of these factors and awareness of these background circumstances that one should read Spooner's letter of May 22, 1882. It is regrettable that Bayard's senatorial tenure ended in 1885 and that Spooner died in 1887. It would have been an exciting intellectual event had they and Abbott entered into an extended three-way public controversy and further explored the divergent positions they represented. It would also have been most useful for the illumination of the current day, three generations removed. The questions involved are still unresolved.

Summer, 1965

West Los Angeles, California

¹³See in particular Abbott's books, *The Theology of an Evolutionist* (New York: The Outlook Co., 1897); *What Christianity Means to Me* (New York: Macmillan, 1921); *The Evolution of Christianity* (Boston: Houghton, Mifflin, 1896).

¹⁷*The Christian Union* began with the issue of January, 1870 and continued through the number for June, 1893, when the title was changed to *The Outlook*. It became increasingly prestigious thereafter, absorbing several other journals, suspending publication in May, 1932. It resumed as *The New Outlook* the following month, and suspended permanently in June, 1935.

³Abbott, *Silhouettes of My Contemporaries* (London: George Allen and Unwin, 1922), preface, p. v. The title of this department ultimately became the name of the journal itself.

⁴Abbott had no difficulty on the subject of conflict between Church and State; his strong patriotic and nationalist sentiments guaranteed this would not be a problem. On a trip to Europe in 1902 he commented favorably on the three-year period of compulsory military service in Italy, and considered it in importance "next to the school system" as a device through which the Italian State might have proper time to redirect young men from the influence of the Catholic Church to the State. Abbott, *Impressions of a Careless Traveler* (New York: The Outlook Co., 1909), pp. 182-183.

If such a contract had ever been made by one private individual to another, and had been signed, sealed, witnessed, acknowledged, and delivered, with all possible legal formalities, no decent court on earth—certainly none in this country—would have regarded it, for a moment, as conveying any right, or delegating any power, or as having the slightest legal validity, or obligation.

For all the reasons now given, and for still others that might be given, the legislative power now exercised by Congress is, in both law and reason, a purely personal, arbitrary, irresponsible, usurped dominion on the part of the legislators themselves, and not a power delegated to them by anybody.

Yet under the pretense that this instrument gives them the right of an arbitrary and irresponsible dominion over the whole people of the United States, Congress has now gone on, for ninety years, and more, filling great volumes with laws of their own device, which the people at large have never read, nor even seen, nor ever will read or see; and of whose legal meanings it is morally impossible that they should ever know anything. Congress has never dared to require the people even to read these laws. Had it done so, the oppression would have been an intolerable one; and the people, rather than endure it, would have either rebelled, and overthrown the government, or would have fled the country. Yet these laws, which Congress has not dared to require the people even to read, it has compelled them, at the point of the bayonet, to obey.

And this moral, and legal, and political monstrosity is the kind of government which Congress claims that the Constitution authorizes it to impose upon the people.

Sir, can you say that such an arbitrary and irresponsible dominion as this, over the properties, liberties, and lives of fifty millions of people—or even over the property, liberty, or life of any one of those fifty millions—can be justified on any reason whatever? If not, with what color of truth can you say that you yourself, or anybody else, can act as a legislator, under the Constitution of the United States, and yet be an honest man?

To say that the arbitrary and irresponsible dominion, that is exercised by Congress, has been delegated to it by the Constitution, and not solely by the secret ballots of the voters for the time being, is the height of absurdity; for what is the Constitution? It is, at best, a writing that was drawn up more than ninety years ago; was assented to at the time only by a small number of men; generally those few white male adults who had prescribed amounts of property; probably not more than two hundred thousand in all; or one in twenty of the whole population.

Those men have been long since dead. They never had any right of arbitrary dominion over even their contemporaries; and they never had any over us. Their wills or wishes have no more rightful authority over us, than have the wills or wishes of men

power, has himself any legal knowledge, or can offer any legal proof, as to who the particular individuals were who delegated it to him. And having no power to identify the individuals who professed to delegate the power to him, he cannot show any legal proof that anybody ever even attempted or pretended to delegate it to him.

Plainly, a man who exercises any arbitrary dominion over other men and who claims to be exercising only a delegated power, but cannot show who his principals are, nor, consequently, prove that he has any principals, must be presumed, both in law and reason, to have no principals; and therefore to be exercising no power but his own. And having, of right, no such power of his own, he is, both in law and reason, a naked usurper.

Sir, a secret ballot makes a secret government; and a secret government is a government by conspiracy; in which the people at large can have no rights. And that is the only government we now have. It is the government of which you are a voluntary member and supporter, and yet you claim to be an honest man. If you are an honest man, is not your honesty that of a thoughtless, ignorant man, who merely drifts with the current, instead of exercising any judgment of his own?

For still another reason, all legislators, so-called, under the Constitution of the United States, are exercising simply an arbitrary and irresponsible dominion of their own; and not any authority that has been delegated, or pretended to have been delegated, to them. And that reason is that the Constitution itself (Art. I, Sec. 6) prescribes that:

"For any speech or debate (or vote) in either house, they (the Senators and Representatives) shall not be questioned (held to any legal responsibility) in any other place."

This provision makes the legislators constitutionally irresponsible to anybody; either to those on whom they exercise their power, or to those who may have, either openly or secretly, attempted or pretended to delegate power to them. And men who are legally responsible to nobody for their acts, cannot truly be said to be the agents of any body, or to be exercising any power but their own; for all real agents are necessarily responsible both to those on whom they act, and to those for whom they act.

To say that the people of this country ever have bound, or ever could bind, themselves by any contract whatever—the Constitution, or any other—to thus give away all their natural rights of property, liberty, and life, into the hands of a few men—a mere conclave—and that they should make it a part of the contract itself that these few men should be held legally irresponsible for the disposal they should make of those rights, is an utter absurdity. It is to say that they have bound themselves, and that they could bind themselves, by an utterly idiotic and suicidal contract.

5 It has been pointed out that Spooner also was a thunderous antagonist of Reconstruction as early as 1870. Perhaps a goodly majority of New England abolitionists were hostile to Reconstruction, a commentary on how badly askew the drive to end slavery had gone, though the Civil War was no more short of achieving "war aims" than any other martial enterprise accompanied by high and noble moral propaganda. Witness the "War to Make the World Safe for Democracy" and "Make This the Last War" slogans of World Wars I and II in this country. Spooner had been an active pamphleteer in the pre-Civil War attack on slavery, ironically enough fought from an argument based on the Constitution. (See his *Unconstitutionality of Slavery*, Boston, 1845). It may be that Spooner was subsequently influenced in his assailing the validity of the Constitution by the pre-war condemnation by his fellow townsman William Lloyd Garrison, as "a covenant with death and an agreement with hell." Spooner also was not deficient in emotional content, but his approach was primarily logically analytic and not denunciatory.

9Abbott, *Reminiscences* (Boston: Houghton, Mifflin, 1915, 1923), Chapter 18, "A Political Revolution," pp. 430-431. Abbott, however, was an uncompromising enemy of individualism; as early as 1865 he had written, "Individualism is the characteristic of simple barbarism, not of republican civilization." *Ibid.*, p. 440.

7Those interested in searching out the origins of the ideology of State socialist propaganda and government ownership or control proposals might find it rewarding to divert their attention away from immigrant radicals of the 1849-1920 period and from native "proletarian" protagonists, and examine for a change the writings and thought of a generous band of native Anglo-Saxon figures of profoundly respectable reputation with an ancestry going back virtually to the Mayflower, if not before. The notion that such ideas are the product of recently arrived "subversives" dies hard, of course; it is one of the foundations of the "golden age" theory.

8"I have steadfastly advocated the doctrine that not only the railways, but the mines, the forests, the waterways—in short, the land and its contents—must be brought under government regulation, state or national, and that this regulation must be extended to all forms of business—including the regulation of food, beverages, and drugs—as fast and as far as is necessary to conserve the public welfare." *Reminiscences*, p. 441. Despite his enthusiasm for much of the foundation of nationalistic socialism, Abbott was hostile to Marxian communism. Abbott, *Silhouettes of My Contemporaries*, pp. 307-309.

9See this writer's account in the introduction to Paul Eltzbacher, *Anarchism* (New York: Libertarian Book Club, 1960).

10The excellent sketch by Robinson in DAB, Vol. 2, pp. 70-72. The definitive full-length account of Bayard's tenure in the Senate is Charles Callan Tansill, *The Congressional Career of Thomas Francis Bayard, 1869-1885* (Washington: Georgetown University Press, 1946).

11*Congressional Record*, 47 Cong., 1 sess., Part 6, July 22, 1882, p. 6356.

12"There are many features of the internal revenue system which are to me most repulsive, most objectionable," Bayard declared, selecting for special criticism "their inquisitorial features and the manner in which they have been often-times conducted." *Congressional Record*, 47 Cong., 1 sess., Part 6, July 24, 1882, p. 6392.

13*Congressional Record*, 48 Cong., 1 sess., April 28, 1884, pp. 3471-73. Bayard cited from Herbert Spencer's "Coming Slavery" article in the *Contemporary Review*, above, p. 3472.

A Letter to Thomas F. Bayard

"Challenging his right—and that of all the other so-called senators and representatives in Congress—to exercise any legislative power whatever over the people of the United States."

To Thomas F. Bayard, of Delaware:

Sir—I have read your letter to Rev. Lyman Abbott, in which you express the opinion that it is at least possible for a man to be a legislator (under the Constitution of the United States) and yet be an honest man.

This proposition implies that you hold it to be at least possible that some four hundred men should, by some process or other, become invested with the right to make laws of their own—that is, *laws wholly of their own device*, and therefore necessarily distinct from the law of nature, or the principles of natural justice; and that these laws of their own making shall be really and truly obligatory upon the people of the United States; and that, therefore, the people may rightfully be compelled to obey them.

All this implies that you are of the opinion that the Congress of the United States, of which you are a member, has, by some process or other, become possessed of some right of *arbitrary dominion* over the people of the United States; which right of arbitrary dominion is not given by, and is, therefore, necessarily in conflict with, the law of nature, the principles of natural justice, and the natural rights of men, as individuals. All this is necessarily implied in the idea that the Congress now possesses any right whatever to make any laws whatever, *of its own device*—that is, any laws that shall be either more, less, or other than that natural law, which it can neither make, unmake, nor alter—and cause them to be enforced upon the people of the United States, or any of them, against their will.

You assume that the right of arbitrary dominion—that is, the right of making laws of their own device, and compelling obedience to them—is a "trust" that has been delegated to those who now exercise that power. You call it "the trust of public power."

But, Sir, you are mistaken in supposing that any such power has ever been delegated, or ever can be delegated, by any body, to any body.

Any such delegation of power is naturally impossible, for these reasons, viz:

1. No man can delegate, or give to another, any right of arbitrary dominion over himself; for that would be giving himself away as a slave. And this no one can do. Any contract to do so is necessarily an absurd one, and has no validity. To call such a contract a "constitution," or by any other high-sounding name, does not alter its character as an absurd and void contract.

2. No man can delegate, or give to another, any right of arbitrary dominion over a third person; for that would imply a right in the first person, not only to make the third person his slave, but also a right to dispose of him as a slave to still other persons. Any contract to do this is necessarily a criminal one, and therefore invalid. To call such a contract a "constitution" does not at all lessen its criminality, or add to its validity.

These facts, that no man can delegate, or give away, his own natural right to liberty, nor any other man's natural right to liberty, prove that he can delegate no right of arbitrary dominion whatever—or, what is the same thing, no legislative power whatever—over himself or anybody else, to any man, or body of men.

This impossibility of any man's delegating any legislative power whatever, necessarily results from the fact that the law of nature has drawn the line, and the only line—and that, too, a line that can never be effaced nor removed—between each man's own interest and inalienable rights of person and property, and each and every other man's inherent and inalienable rights of person and property. It, therefore, necessarily fixes the unalterable limits, within which every man may rightfully seek his own happiness, in his own way, free from all responsibility to, or interference by, his fellow men, or any of them.

All this pretended delegation of legislative power—that is, of a power, on the part of the legislators, so-called, to make any laws of their own device, distinct from the law of nature—is therefore an entire falsehood; a falsehood whose only purpose is to cover and hide a pure usurpation, by one body of men, of arbitrary dominion over other men.

That this legislative power, or power of arbitrary dominion, is a pure usurpation, on the part of those who now exercise it, and not a "trust" delegated to them, is still further proved by the fact that the only delegation of power, that is even professed or pretended to be made, is made *secretly*—that is, by *secret ballot*—and not in any open and authentic manner; and therefore not by any men, or body of men, who make themselves personally responsible, as principals, for the acts of those to whom they profess to delegate the power.

All this pretended delegation of power having been made secretly—that is, only by secret ballot—not a single one of all the legislators, so-called, who profess to be exercising only a delegated